

PRE-APPEAL BRIEF REQUEST FOR REVIEW		Docket Number Q77525
Mail Stop AF Commissioner for Patents P.O. Box 1450 Alexandria, VA 22313-1450	Application Number 10/664,865	Filed September 22, 2003
	First Named Inventor Charles LE GALL	
	Art Unit 3749	Examiner Samantha A. Miller
<p style="text-align: center;">WASHINGTON OFFICE 23373 CUSTOMER NUMBER</p>		
<p>Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.</p> <p>This request is being filed with a notice of appeal</p> <p>The review is requested for the reasons(s) stated on the attached sheet(s). Note: No more than five (5) pages may be provided.</p> <p><input checked="" type="checkbox"/> I am an attorney or agent of record.</p> <p>Registration number <u>63,266</u></p> <p style="text-align: right;"><u>/Michael C. Jones/</u> Signature</p> <p style="text-align: right;"><u>Michael C. Jones</u> Typed or printed name</p> <p style="text-align: right;"><u>(202) 293-7060</u> Telephone number</p> <p style="text-align: right;"><u>September 4, 2009</u> Date</p>		

PATENT APPLICATION

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of

Docket No: Q77525

Charles LE GALL

Appln. No.: 10/664,865

Group Art Unit: 3749

Confirmation No.: 4308

Examiner: Samantha A. Miller

Filed: September 22, 2003

For: AN IMPROVED AIR-CONDITIONED EQUIPMENT CABINET, IN PARTICULAR FOR
TELEPHONY

PRE-APPEAL BRIEF REQUEST FOR REVIEW

MAIL STOP AF - PATENTS

Commissioner for Patents

P.O. Box 1450

Alexandria, VA 22313-1450

Sir:

Pursuant to the Pre-Appeal Brief Conference Pilot Program, and further to the Examiner's Final Office Action dated March 17, 2009, Applicant files this Pre-Appeal Brief Request for Review. This Request is also accompanied by the filing of a Notice of Appeal. Applicant turns now to the rejections at issue:

Claims 1-16 stand rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Tikka (U.S. Publication 2001/0052412) in view of Noren (U.S. Patent 4,600,050). Applicant respectfully traverses this rejection.

Claim 1 recites, *inter alia*: A container comprising:

walls defining an inside zone housing at least one piece of equipment,

wherein at least one of said walls comprising:

at least three sub-walls spaced apart from one another in such a manner as to define at least first and second air circulation spaces, ...

wherein said first space communicating with the outside of said container via at least two outside openings, and said second space communicating with said inside zone via at least two openings,

wherein a first one of said sub-walls faces the outside of said container,

wherein a second one of said sub-walls faces said inside zone...

In rejecting claim 1, Examiner asserts that Tikka teaches substantially all of the claimed features. However, the Examiner acknowledges that Tikka does not teach first and second air

circulation spaces being separated without any communication therebetween, and instead asserts that Noren cures this deficiency. Applicant respectfully submits that the Examiner has misconstrued the applied references.

Tikka is directed to a cooling system for a cabinet, which includes a heat sink 100. *See* Fig. 1, and Paragraphs [0018]-[0020]. As shown in Fig. 1, the heat sink 100 is formed as part of an interior wall, which sub-divides the interior of the cabinet into two interior zones. One side of the heat sink is located in an interior zone which houses component racks 1,2,3, and the other side is located in a zone which does not house any component racks. *See* Fig. 1, and Paragraph [0018]. In other words, in Tikka the heat sink 100 is fully enclosed within the cabinet and does not have any side facing the outside of the cabinet.

In attempting to map the claimed features onto the Tikka reference, the Examiner analogizes the cabinet shown in Fig. 1 of Tikka to the claimed container and further analogizes the heat sink 100 of Tikka to the claimed “at least one of said walls comprising: at least three sub-walls...” However, as recited in claim 1, “...a first one of said sub-walls faces the outside of said container...” and “...a second one of said sub-walls faces said inside zone....” In other words, the claimed “at least one of said walls comprising: at least three sub-walls...” has one sub-wall facing an interior zone of the container and another sub-wall facing the outside of the container. Conversely, as discussed above the heat sink 100 of Tikka is fully enclosed within the cabinet and has no side facing the outside of the cabinet. Thus, Applicant respectfully submits that Tikka does not teach “at least one of said walls comprising: at least three sub-walls...” having all the unique features claimed.

Further, Noren does not provide any teachings regarding a wall of a container having multiple side walls. Thus, Applicant respectfully submits that Noren cannot cure the deficiencies of Tikka and respectfully submits that claim 1 is patentable over these references for at least this reason.

Further, as the Examiner acknowledges, Tikka does not teach or even suggest first and second air circulation spaces being separated without any communication therebetween. Thus, the Examiner asserts that the teachings of Tikka could be combined with the teachings of Noren to cure this deficiency. However, Applicant submits that in asserting Tikka could be combined with Noren, the Examiner ignores that such a combination would be contrary to Tikka’s intended objective.

MPEP 2141.03(VI) states “A prior art reference must be considered in its entirety, i.e., as a whole, including portions that would lead away from the claimed invention. *W.L. Gore & Associates, Inc. v. Garlock, Inc.*, 721 F.2d 1540, 220 USPQ 303 (Fed. Cir. 1983), cert. denied, 469 U.S. 851 (1984)”. Further, MPEP 2143.02(VI) states “[i]f the proposed modification or combination of the prior art would change the principle of operation of the prior art invention being modified, then the teachings of the references are not sufficient to render the claims *prima facie* obvious. *In re Ratti*, 270 F.2d 810, 123 USPQ 349 (CCPA 1959)”. In other words, an examiner cannot selectively combine features from different references to map onto the particular features of the claims, while ignoring other teachings of the references, which teach away from the asserted combination.

In this case, Tikka describes problems associated with a cooling system for a sealed cabinet which relies solely on an air-to-air heat exchanger as used in Noren. *See* Paragraphs [0005]-[0007] of Tikka. To overcome these problems, Tikka describes combining a heat exchanger 100 with direct cooling of the component racks 1,2,3 by injecting external air through filters 104 and fans 105 and into the component rack containing zone. *See* Fig. 1 and Paragraphs [0013], [0014], and [0021]-[0023]. In other words, Tikka teaches overcoming problems associated with air-to-air heat exchangers by providing for direct injection of external air into the zone to be cooled. Thus, Applicant respectfully submits the principle objective of Tikka is to improve cooling performance of an air-to-air heat exchanger by directly injecting exterior air into the zone to be cooled. *See* paragraph [0013].

Conversely, Noren is cited for teaching forming separate air circulation spaces “without any communication therebetween... and a sub-wall... sealing separates said first and second circulation spaces so that air inside said container does not contact air outside said container.” However, if there is no communication between said first and second air circulation spaces, there can be no direct injection of external air as taught by Tikka.

Therefore, Applicant respectfully submits that it would be contrary to the principle objective of Tikka to eliminate direct injection of exterior air into the region to be cooled by applying the teachings of Noren and thus submits that a person of ordinary skill in the art would not combine Tikka and Noren as the Examiner has suggested for at least this reason. Therefore, Applicant

respectfully submits that claim 1 is patentable over this combination of references for this additional reason.

Further, Applicant also submits that the Examiner has misconstrued the Noren reference because Noren does not actually teach a “container comprising ... first and second air circulation spaces” as claimed, but instead simply teaches a container which separates an internal region (inside element 90) from an exterior region (outside element 90). In other words, Noren simply shows an internal space inside of a container 90 isolated from the outside and does not teach two separate air circulation spaces. See Fig. 1. Therefore, Applicant respectfully submits that Noren does not teach the features asserted by the Examiner and further submits that claim 1 is patentable for this additional reason.

For all the above discussed reasons, Applicant respectfully submits that claim 1 and all claims dependant there on are patentable over the applied references.

Claims 13-15

Further, claim 13 depends directly from claim 1 and recites “wherein each of at least three walls of said container comprise said at least three sub-walls”. In other words, in an exemplary container consistent with claim 13, three walls of the container are made of the least three sub-walls described in claim 1. As described in claim 1, the at least three sub-walls are “spaced apart from one another in such a manner as to define at least first and second air circulation spaces, said first and second circulation spaces being separated without any communication therebetween”. Further, claim 1 also recites “...a first one of said sub-walls faces the outside of said container, ...a second one of said sub-walls faces said inside zone...” and “...a third one of said sub-walls is interposed between said first and second sub-walls, and said third one of said sub-walls sealingly separates said first and second circulation spaces...”

In rejecting claim 13, the Examiner simply asserts “[e]ach of at least three walls (top, bottom, and one side) of said container comprise are constituted [sic] by said at least three sub- walls (side walls of 100) (Fig. 1)”. See Numbered element 13 on page 4 of the Final Office Action of March 17, 2009. However, Fig. 1 of Tikka does not show any three walls (let alone the top, bottom, and one side, as asserted by the Examiner) being made up of three sub-walls having the unique features recited in claim 1, as claimed in claim 13. Further, Applicant again submits that Noren provides no

teachings regarding a wall of a container having multiple side walls and thus cannot cure the deficiencies of Tikka. Therefore, Applicant respectfully submits claim 13 is patentable over the applied references for this additional reason.

Further, claim 14 depends from claim 13 and recites “said at least three walls communicate with one another in such a manner as to comprise a single-shaped element”. In other words, in an exemplary container according to claim 14, the at least three walls, which are described in claim 13 as being made up of the at least three sub-walls described in claim 1, are interconnected to form a single shaped element.

As discussed above, neither Tikka, nor Noren teach or even suggest at least three walls being made up of at least three sub-walls having the features recited in claim 1. Further, neither Tikka, nor Noren actually show at least three walls, each being made up of the three sub-walls according to claim 1, being connected to form a single-shaped element. Thus, Applicant respectfully submits that claim 14 is patentable for at least this additional reason.

Further, claim 15 also depends from claim 13 and recites “wherein one of said at least three walls is a top wall”. In other words, in an exemplary container according to claim 15, at least three walls are made up of at least three sub-walls having the features described in claim 1, and one of the walls is a top wall of the container.

Applicant respectfully submits that neither Tikka, nor Noren teach or even suggest the top wall of the container and at least two other walls being made up of at least three sub-walls having the features of claim 1. Thus, Applicant respectfully submits that claim 15 is patentable over the applied references for at least this reason.

For at least the reasons discussed above, Applicant respectfully requests that these rejections be withdrawn.

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